Filed 7/27/09 In re K.A. CA2/5

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re K.A. et al., Persons Coming Under the Juvenile Court Law.	B214110 (Los Angeles County Super. Ct. No. CK66018)
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. S.P. et al., Defendants and Appellants.	

APPEAL from an order of the Superior Court of Los Angeles County. Jan G. Levine, Judge. Affirmed.

Amy Z. Tobin, under appointment by the Court of Appeal, for Defendant and Appellant S.P.

Andrea R. St. Julian, under appointment by the Court of Appeal, for Defendant and Appellant V.O.

James M. Owens, Assistant County Counsel, Kim Nemoy, Deputy County Counsel for Plaintiff and Respondent.

V.O. (Mother) appeals from orders terminating her parental rights to her daughters K. and F. S.P., who is F.'s father, but not K's., appeals from an order terminating his parental rights to F.

Mother's contentions on appeal are that the juvenile court finding that the children were likely to be adopted (Welf. & Inst. Code, § 366.26, subd. (c)(1))[1] was not supported by clear and convincing evidence, and that the court erred when it denied her request for a continuance of the section 366.26 hearing. S. contends that the finding that F. was likely to be adopted was not supported by clear and convincing evidence, and joins in Mother's arguments.

We find no abuse of discretion in the denial of a continuance (*In re Karla C.* (2003) 113 Cal.App.4th 166, 179-180) and that there is substantial evidence for the finding of adoptability. (*In re Sarah M.* (1994) 22 Cal.App.4th 1642, 1649.) We thus affirm.

We limit our summary of the facts to the facts relevant to the issues.

This dependency was initiated in October 2006, when K. was seven years and F. was two, after their half-brother, K.L. (then five years old) told his teacher that S. had hit Mother. (K.L. was soon released to his father, and is not the subject of this appeal.) DCFS presented the court with evidence that appellants had a substantial history of domestic violence, including evidence that (in K.'s words) S. hit Mother "a lot of times," and that both appellants hit K. "a lot." DCFS also presented evidence concerning S.'s criminal history: he was a registered sex offender who had pled guilty to two counts of forcible rape. In the pre-plea probation report on S.'s convictions, the probation officer set out the facts of S.'s offenses: in 1988, a 14-year-old girl went for a ride with S. He tried to kiss her. She resisted. He responded by choking her, rubbing mace into her eyes, and raping her. Later that year, he offered his second victim (18 years old) a ride, drove her to a park, choked her when she resisted his advances, then raped her.

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[1] All further statutory references are to the Welfare and Institutions Code.

K. and F. were placed in foster care. The foster parents reported that they showed signs of neglect. K. had an upper respiratory infection, a skin fungus, dermatitis of the scalp, and cavities. F.'s teeth were badly decayed.

The petition was sustained on March 13, 2007, under section 300, subdivisions (a), (b), and (d) on findings that appellants had a history of domestic violence, that S. had violently assaulted Mother in the children's presence, that appellants physically abused K., and that appellants had created a detrimental and endangering home environment in that S. was a sex offender.

The court ordered reunification services for both appellants. Mother's plan was domestic violence counseling, parenting, and individual counseling. S.'s plan was parenting, domestic violence counseling, sex abuse counseling, and anger management. Both parents were granted visits.

On February 4, 2008, in B198186, we affirmed the jurisdictional and dispositional orders, but remanded the matter for compliance with the Indian Child Welfare Act. (There is no ICWA contention on this appeal.)

Mother made significant progress in her case plan, and for a time had regular and appropriate visits. In fact, for a period of time, she had unmonitored visits. However, her visits became inconsistent, and she never fully completed her case plan. At several points she concealed her address from DCFS, which DCFS suspected meant that she wished to conceal the fact that she was still living with S. Mother's reunification services were terminated in July 2008.

S.'s visits were less successful, and he did not otherwise comply with his case plan. For him, reunification services were terminated earlier, on October 30, 2007.

Throughout the dependency, both parents harassed and threatened the children's foster parents, and made false allegations against them, causing the foster parents to ask that the children be moved. By the time of the section 366.26 hearing, in February 2009, the children were in their seventh placement.

Unsurprisingly, the dependency took a toll on the children. F. began therapy in September 2007. A February 2008 report from the therapist stated that F. had made

"minor progress" with goals which included decreasing temper tantrums, aggression and self-injurious behavior. The report recommended Regional Center evaluation and that she continue in counseling.

Both F. and K. saw therapist Diane Villalobos between June and November 2008. (Apparently, a change in placement necessitated a change in therapists.) Villalobos reported to DCFS in November, and in January 2009, pursuant to a DCFS section 388 petition to end appellants' visits, testified before the court. Her report and testimony were that when she began to see the children, they had symptoms of anger, loss, grief, and inability to trust. In particular, F. dug her nails into her skin, scratched herself and pulled her hair out when she got angry, fought with her sister, and urinated on herself. K. wore provocative clothes not suited for her age, sought attention from older males, seemed detached from others, and was pessimistic. Both girls were easily irritated, highly guarded, hypervigilant, and had low self-esteem. However, both children were doing much better by November. F.'s angry outbursts had decreased. She could listen well and follow the directions of her foster parents, and had gained ability to trust. K., too, had progressed: she wore clothes appropriate to her age, had demonstrated a positive attitude toward herself, had decreased her fear of the dark and her sleep disturbances, and was able to trust others.

Neither child was a Regional Center client.

The children were matched with a potential adoptive family in mid-November 2008 and visited with them three times that month. The visits went very well. The parents and the children were excited about becoming a family. Notably, when F. had a tantrum during a visit, and tried to pull her hair out, the potential adoptive parents were able to work with her and calm her. The incident increased the parents' desire to adopt and help these children. The children were placed with those parents on December 6. At the end of January, DCFS reported that although both children misbehaved (F. had tantrums and pulled out her hair; K. had tantrums and engaged in passive defiance) their behavior steadily improved with each week.

The section 366.26 hearing took place in February 2009. Counsel for the children asked for a continuance, arguing that the children had been in the potential adoptive home for only two months and that "I'd like to see the relationship grow a little bit and see if it works out before we terminate parental rights . . . ." Mother's and S.'s counsel joined in the motion. The court denied the motion, finding that while there was no guarantee that this family would adopt the children, the law did not require such a guarantee, and that there was no ground for a continuance.

The hearing proceeded. DCFS reports were entered into evidence, including the most recent report, which was to the effect that the potential adoptive parents wanted to adopt, and that the children were doing very well in their home. S. testified, and arguments were made. The court found by clear and convincing evidence that the children were adoptable and terminated parental rights.

Appellants acknowledge that a prospective adoptive parent's willingness to adopt indicates that a child is likely to be adopted (*In re Sarah M., supra,* 22 Cal.App.4th at p. 1649), but argue that these children had so many problems that although one family wanted them, they were not "generally adoptable," that is, that if this placement failed, no other family could be found. We do not so read the record. This prospective adoptive family knew of and saw the children's problems, and maintained a commitment to adoption. That is substantial evidence that the children were adoptable, by this family or another. (*Ibid*.) Further, with the help of their prospective adoptive parents and a therapist, the children were overcoming those problems. We note in this regard that although the children had many placements, their problems were not what caused foster families to ask that they be moved.

Appellants also express concern that the adoptive parents might not continue the children's relationship with their brother K.L. There is no evidence on this subject, just speculation. At any rate, even if that were so, it would not mean that the children were not adoptable.

Nor do we see an abuse of discretion in the denial of a continuance. "The juvenile court may continue a dependency hearing at the request of a parent for good cause and

only for the time shown to be necessary. (§ 352, subd. (a); Cal Rules of Court, rule 1422(a)(2).) Courts have interpreted this policy to be an express discouragement of continuances. (See, e.g., *In re Emily L.* (1989) 212 Cal.App.3d 734, 743.) The court's denial of a request for continuance will not be overturned on appeal absent an abuse of discretion." (*In re Karla C., supra,* 113 Cal.App.4th at pp. 179-180.)

Here, the parties asked for more time to see whether the current placement would work out. That is essentially an argument that, at the time of the 366.26 hearing, there was insufficient evidence that the children were adoptable, so that more time, leading to more evidence, was needed. But there was sufficient evidence that the children were adoptable, so that no continuance was necessary. "To be considered adoptable, a minor need not be in a prospective adoptive home and there need not be a prospective adoptive parent waiting in the wings. [Citation.]" (*In re R.C.* (2008) 169 Cal.App.4th 486, 491, internal quotations omitted.)

Disposition

The judgment is affirmed.

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ARMSTRONG, J.

We concur:

TURNER, P. J.

MOSK, J.